

Memorandum

Date: May 20, 1998
To: BDAC Assurances Work Group Members
From: Sue Lurie
Subject: Contingency Response Process Development

Goals of a Contingency Response Process

- To provide a process that promotes accountability and appropriate actions by Program administrators or participants when contingencies, or unpreventable circumstances, affect Program functions.
- To avoid disrupting Program implementation any more than necessary: the Program should not have to come to a halt while minor problems are resolved. By the same token, minor problems should not be allowed to become more serious because they are not dealt with.
- To increase the potential for effective, efficient solutions to contingencies. The process should be designed so that resolution of problems caused by unpreventable circumstances is speedy and minimizes staff time and financial resources.
- To promote Program durability by avoiding or minimizing imbalances among interests when unpreventable circumstances occur. Having a process that acknowledges and deals with the need to rebalance benefits and costs when necessary should provide incentives to various interests to promote stability across all elements of the Program through the response process. For instance, if a water supply reservoir cannot be built, a Program response could be to rebalance the solution so that all interests proportionately absorb the loss. This would provide incentives for all interests to remain committed to achieving objectives in each element of the package.

Purpose of this memo

The purpose of this memo is to propose a refined set of contingency categories and some general procedures to respond to those categories of contingencies.

Work Group Meeting Objectives

- To generate discussion on whether the types and number of categories are sufficient, or if others are needed
- To discuss refinement of proposed Program responses
- To solicit ideas on who should have authority to manage the response process. This may provide additional understanding about what type of administrative entity can best meet Program needs.

Review of the April 28, 1998 Discussion

Discussion took place at the April 28, 1998 Assurances Work Group meeting to identify generic categories of contingencies. A matrix and continuum line were used to help think about how contingencies might manifest themselves:

- at different levels in the Program, from specific projects to programmatic functions;
- as different managerial types affecting administrative, policy or financial aspects of the Program; and
- with different effects on Program implementation and operation producing minor, substantive or catastrophic consequences.

Proposed Program Responses to Contingencies

The levels at which contingencies affect the program (whether confined to a project or influencing Program-wide functions), and the degree to which they affect it (from minor to catastrophic outcomes), appear to be relevant while management types do not seem to matter significantly.

In order to ensure the CALFED principle of durability, the Program should have both accountability and flexibility when responding to contingencies. This suggests different procedures to deal with different contingency effects. Minor problems should be resolved swiftly at the lowest possible level to avoid bringing the Program to a standstill over obstacles that may have simple solutions. Where problems are more complex and affect the Program in more significant ways, managers need to have clear guidelines for responding to difficulties to avoid halting Program implementation and operation due to inappropriate responses that may cause unintended consequences and conflicts. In catastrophic cases, an explicit process imbedded in the programmatic implementation plan will help ensure the Program remains intact while participants work through serious issues.

Following is a chart of contingency categories with identification of general characteristics and different ways that the Program should respond. Examples of contingencies are found on the pages following the chart.

Proposed Contingency Categories and Program Responses – May 29, 1998

NOTE: Examples on following page

Category	Effects/Outcomes	Response Process
Minor	<ul style="list-style-type: none"> Has negligible effect on Programmatic implementation or operation -and/or- Confined to single common program element (CPE) with low risk of affecting other CPEs -and/or- Requires only minor and/or temporary changes in implementation or operation of affected CPE 	<ul style="list-style-type: none"> Delegated to lowest appropriate decision maker Immediate response and resolution as deemed appropriate by decision maker Notification of other CPE and overall Program managers as appropriate
Significant	<ul style="list-style-type: none"> Will prevent CPE from achieving objectives -and/or- May immediately affect more than one PCE or has potential to affect more than one PCE if not resolved in timely manner -and/or- May immediately or eventually affect Programmatic implementation or operation -and/or- Requires significant changes in implementation or operations of affected CPE(s) on either temporary or permanent basis 	<ul style="list-style-type: none"> If one CPE affected, delegated to highest appropriate decision maker in charge of implementing that CPE If more than one CPE affected, delegated to oversight entity for resolution Notice of issue to all CPE managers and Program admin. Written notice of issue to affected parties Written notice of resolution of outcome to all CPE managers, Program administration and affected parties
Catastrophic	<ul style="list-style-type: none"> Immediately halts Programmatic implementation or operations -and/or- Requires changes in implementation and operations policies in order for Program to go forward 	<ul style="list-style-type: none"> Formal process Early public notice Public hearings Stakeholder involvement Written findings
Emergency	<ul style="list-style-type: none"> Sudden, unexpected occurrences that pose imminent loss or damage to life, health, safety, property or essential public services -and/or- Requires immediate suspension of Program operations 	<ul style="list-style-type: none"> Immediate notification of appropriate emergency mgt. organizations Delegated responsibility within Program to coordinate with emergency mgt. organizations

Example Contingencies

Minor

An example of a minor contingency would be the failure of a contractor to deliver an acceptable work product for a habitat restoration project such as planting saplings but not tending them thereby causing a large die-off. It is important for the ecosystem restoration program to be able to remedy the situation as quickly as possible.

Those in charge of the project should not have to wait for deliberations or instructions from elsewhere, nor should an entity responsible for Program oversight need to be burdened with the responsibility for correcting the problem. Since such occurrences are likely to be common, it does suggest that the Program should provide explicit direction regarding who has authority for resolution of the problem to avoid confusion or conflicts.

Significant

An example of a contingency which could cause significant problems with operations for a common program element (CPE) and which could potentially affect Programmatic implementation and operations would be a lawsuit filed by an outside interest blocking construction of a new water storage facility agreed to by Program participants. The water supply reliability common program element may not be able to fulfill its objectives without the storage facility. That in turn might impede progress on implementation of linked CPEs and overall Program implementation and operation of the CALFED solution.

To ensure coordination of communication and efforts to resolve the contingency, the Program should have a written set of protocols to provide clear authority, direction and accountability for decisions. Without having a predetermined process that can be deployed, the Program risks inadvertently allowing a resolution process to develop which increases potential for conflict and unintended consequences. The situation suggests that the Program may want to have an entity or a committee that can be convened to oversee the contingency response process.

Catastrophic

An example of a catastrophic contingency would be a situation 15 years into the program at which time implementation of new water quality standards are adopted for a substance previously regarded as benign. The new standards make it impossible to operate the water supply facilities as agreed and meet those standards.

Renegotiation of the terms of the solution will likely need to take place since the Program can no longer operate as agreed. The Program should consider having provisions in the programmatic implementation plan and agreement that obligates participants in the CALFED solution to maintain the Program while negotiating a modified solution. The terms should also include a clear process to follow. Waiting until such a contingency occurs and having no agreed-to process from which to start invites greater potential for conflict and situations that threaten the Program's durability.

Emergency

An emergency would be any sudden, unexpected occurrence that poses imminent loss or damage to life, health, safety, property or essential public services. Examples include flooding, fire, earthquake, toxic spill or any other event requiring immediate emergency management response. In many cases, the Program may need to suspend operations while emergency conditions prevail.

The Program should have an explicit set of guidelines for notification of appropriate emergency response organizations. If operations need to be suspended, there may need to be significant coordination between emergency response organizations and Program managers to expedite return to normal Program function. In addition, there will likely be the need to determine what additional Program contingency response—Minor, Significant or Catastrophic—is appropriate once the emergency situation is resolved.